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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

PAT CHOATE,
Petitioner,
v.
TRW INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

INTRODUCTION [1]

Petitioner Pat Choate ambitiously attempts to convert his unsuccessful employment termination case, involving the routine application of settled summary judgment principles to settled principles of state employment law, into

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[1] Pursuant to Rule 29.1, the Court is advised that TRW Inc. owns less than 100% interest in forty-five entities, of which only five are publicly held. Those five are as follows: Moresa, S.A. de C.V.; Representaciones C.V.D., S.A.; Sybase, Inc.; TRW do Brasil, S.A.; and United Insurance Company.

a matter of constitutional significance. What is abundantly clear from the Petition, however, is that this case presents no "conflict" among the lower courts, no important and unresolved question of constitutional law, and no other important, unresolved question of federal law.

Indeed, Petitioner's first question—"whether confusion exists among the lower courts as to the burden placed on the movant, as well as the sufficiency of the opposition by a nonmovant to withstand summary judgment"—states no reviewable question at all. Whether or not "confusion exists" in some courts about the respective burdens of summary judgment movants and non-movants, this Court sufficiently clarified and defined those burdens in three decisions rendered less than ten years ago. *See Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Moreover, the Court of Appeals in this case was not at all "confused." On the contrary, it properly applied this Court's summary judgment principles in affirming the grant of summary judgment in favor of TRW. Petitioner's second question—whether the dismissal of a case on summary judgment violates the non-movant's constitutional right to a jury trial—presents a question that was resolved nearly a century ago. *See Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 320 (1902) (summary judgment procedure does not violate a litigant's Seventh Amendment rights). Because Petitioner has raised no question remotely worthy of this Court's review, the Court should deny the Petition.

REASONS FOR DENYING THE WRIT

I. "WHETHER CONFUSION EXISTS AMONG THE LOWER COURTS" ON SUMMARY JUDGMENT BURDENS PRESENTS NO QUESTION APPROPRIATE FOR THIS COURT'S REVIEW

1. With no conflict among the lower courts and no important, unresolved question of federal law to support his Petition (S. Ct. Rule 10), Petitioner discourses at length about supposed judicial "confusion" in the aftermath of this Court's trilogy of summary judgment decisions in 1986. Petitioner first asserts that some lower courts have appeared "confused" in explaining the Court's summary judgment standards—with some courts seeming to focus on "pre-trilogy" law (Pet. 8-11, *citing, e.g., Clark v. Coats & Clark, Inc.*, 929 F.2d 604 (11th Cir. 1991)) and others seeming to focus on the *Matsushita* Court's "implausibility" standard or some variation on that standard (Pet. 11-14, *citing, e.g., Russ v. International Paper Co.*, 943 F.2d 589 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 1675 (1992); *In re Coordinated Pretrial Proceedings*, 906 F.2d 432 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 2274 (1991)). Petitioner next complains that most lower courts are "confused" simply because they are "silent" or choose to "remain quiet" as to their actual summary judgment reasoning (Pet. 14-17), noting variously that "it is simply hard to tell" what the courts are doing (Pet. 10) and that "the reasoning behind these approaches is not apparent on the surface" (Pet. 11).[2]

That some courts in the Fifth, Ninth or Eleventh Circuits may possibly be confused—in what Petitioner concedes may be "subtle" ways (Pet. 11)—provides no basis

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[2] Several of Choate's lower court cases turn not on summary judgment burdens but on proper burdens of proof under federal discrimination laws, which are irrelevant here and which this Court recently resolved in *St. Mary's Honor Center v. Hicks*, 113 S. Ct. 2742 (1993).

for this Court's review. Even if some panels in some circuits were as confused as Petitioner suggests, this Court confirmed and elaborated on the controlling summary judgment procedure less than ten years ago. *See Matsushita Electric Industrial Co.*, 475 U.S. at 587 (elaborating on the "genuine issue" requirement); *Celotex Corp.*, 477 U.S. at 325 (elaborating on the movant's initial burden of production); *Anderson*, 477 U.S. at 254 (elaborating on the substantive legal standards applied on summary judgment). Even then, the Court did not overturn fundamental principles of summary judgment. Instead, this Court repeatedly cited its "pre-trilogy" summary judgment cases, confirming that they remained good law. *See, e.g., Celotex Corp.*, 477 U.S. at 325 (*citing Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970)); *Anderson*, 477 U.S. at 248-49 (*citing Adickes* and *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253 (1968)); *Matsushita Electric Industrial Co.*, 475 U.S. at 586 (*citing Cities Service Co.*). There is no need, in this case, to revisit that good law again.

2. Apparently recognizing as much, Petitioner concocts a parade of horribles that "may" result from the application of summary judgment principles by "silent" courts (Pet. 15). Petitioner initially suggests that appellate courts will have difficulty redressing errors based on silently-applied summary judgment principles (Pet. 15). That argument, of course, completely ignores that appellate courts review summary judgment rulings *de novo*—just as the Court of Appeals expressly did in this case (Pet. App. A, 5a).

Next, Petitioner attributes a number of "dangerous" (Pet. 15) motives to these "silent" courts, suggesting that courts are using summary judgment as an "insidious" docket control technique or as a method for "making political decisions as to the types of cases that they want to go to trial" (Pet. 16). Petitioner, of course, nowhere explains just how this speculative attack on the integrity of the lower courts warrants this Court's review. Nor

does he even acknowledge the most obvious explanation for their "silence"—that they are quite familiar with summary judgment procedure, which has been a part of the Federal Rules of Civil Procedure for over 50 years (*see Celotex Corp.*, 477 U.S. at 327) and are comfortable applying that settled procedure.

II. THE COURT OF APPEALS PROPERLY APPLIED SETTLED SUMMARY JUDGMENT PRINCIPLES IN AFFIRMING THE DISMISSAL OF PETITIONER'S EMPLOYMENT TERMINATION CASE

In all events, while perhaps of some theoretical interest, Petitioner's lengthy discourse on the supposedly improper application of summary judgment principles in other circuits is totally irrelevant to this case. What matters here is what *this* circuit court did in *this* case. And the Court of Appeals here was neither silent nor confused.

In a thorough and well-reasoned opinion, the court below unanimously affirmed the district court's grant of summary judgment to TRW on Petitioner's three state law claims and, in doing so, correctly stated this Court's summary judgment standards (Pet. App. A, 5a-7a). Specifically, the court below explained that the movant for summary judgment bears the burden of demonstrating the absence "of a genuine issue of material fact" (Pet. App. A, 5a)—just as Rule 56 requires; that "[w]here, as here, the 'nonmoving party shoulders the burden of proof at trial, the movant's burden is met by a sufficient showing . . . that there is an absence of evidence to support the nonmoving party's case' " (Pet. App. A, 5a) (citations omitted)—just as this Court held in *Celotex*, 477 U.S. at 325; and that, if the movant meets this burden, the burden then shifts to the nonmoving party to demonstrate that a genuine issue of material fact does exist (Pet. App. A, 5a)—just as this Court explained in *Anderson*, 477 U.S. at 256. Petitioner thus has no basis at all for claiming that the Court of Appeals was the

slightest bit confused or uncertain about the parties' burdens on summary judgment.

The Court of Appeals then correctly applied those standards. The court's opinion makes abundantly clear that it reviewed all of the evidence that the district court had reviewed (Pet. App. A, 2a-3a), including Petitioner's sworn deposition testimony about what TRW allegedly told him and his subsequent affidavit that embellished his deposition testimony with his self-serving characterizations of what TRW allegedly told him. The court's opinion likewise makes clear that it then took Petitioner's testimony "in the light most favorable" to him (*see, e.g.*, Pet. App. A, 2a, 7a)—just as, the court noted, this Court's decision in *Anderson*, 477 U.S. at 255, required it to do. Contrary to Petitioner's conclusory assertions, therefore, the Court of Appeals did not discard Petitioner's testimony as "implausible" or "dismiss[] out of hand" his sworn testimony (Pet. 14, 20). Nor is there any indication that the court used summary judgment to flee from a "politically distasteful" case, as Petitioner hypothesizes (Pet. 17).

In the end, Petitioner's problem is not with what the Court of Appeals said or did, but with his own evidence. The court was entirely correct in dismissing his breach of contract claim, based on the well-established presumption of at-will employment (Pet. App. A, 3a-4a), the irrefutable documentary evidence confirming TRW's right to terminate its employees at will (Pet. App. A, 4a-5a), and Petitioner's own testimony that his supposed "contract" was based on his own personal "understandings" about his employment relationship—not any "clearly expressed" contractual intent on the part of *both* parties (Pet. App. A, 4a-6a). The court was likewise entirely correct in dismissing Petitioner's promissory estoppel claim, based on his testimony about what TRW's former CEO allegedly "promised" him concerning his book—*i.e.*, that "[t]he topic sounds wonderful, and I have no problems with it" (Pet. App. A, 7a). The court properly concluded:

> Even taking the evidence in the light most favorable to appellant, [TRW's] statement does not meet that description [of what constitutes a promise of continued employment]. As the claim of an estopping promise could not "reasonably be resolved in favor of" Choate, *Liberty Lobby*, 477 U.S. at 250, summary judgment was warranted.

(Pet. App. A, 7a). To represent, as Petitioner does (Pet. 17), that the court below did not offer "the slightest clue as to why the sworn testimony of Petitioner" was deficient ignores the court's plain words.[3]

There is no reason at all to allow Petitioner to argue once again the facts that two federal courts have already fully examined and properly found deficient as a matter of law. Contrary to Petitioner's assertions about the "serious constitutional ramifications" involved (Pet. 8), there are none. This case involves nothing more than the proper application of this Court's settled summary judgment principles to unfounded state employment law claims.[4]

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[3] That the Court of Appeals did not discuss every piece of evidence set forth by each party is hardly surprising, and certainly does not suggest that the opinion is "baffling" (Pet. 14), let alone that it warrants review by this Court. On the contrary, it suggests, as TRW contended below, that much of Petitioner's purported "evidence" was simply irrelevant to the state law issues in the case.

[4] While a recitation of all of Petitioner's factual misstatements in his Petition would render this Opposition unwieldy, an examination of two such misstatements is illustrative. First, Petitioner asserts as fact that TRW's former CEO "promised" him permanent employment (Pet. 20)—even though he admitted, in his sworn deposition, that the CEO never actually said a word about employing him permanently. Instead, TRW's former CEO only suggested, years after Petitioner joined TRW, that Petitioner would have a "long term future" with TRW and that he had "no problems" with Petitioner's book topic (J.A. 132-33, 138-42, 176-77). Such statements were insufficient, as a matter of state law, to support Petitioner's supposed employment contract (Pet. App. A, 6a, Pet. App.

III. WHETHER SUMMARY JUDGMENT PROCEDURE VIOLATES THE SEVENTH AMENDMENT PRESENTS A QUESTION THAT THIS COURT RESOLVED LONG AGO

In his second question presented, Petitioner suggests that dismissing his case on summary judgment deprived him of his right to a jury trial under the Seventh Amendment. Petitioner ignores that this Court held long ago that summary judgment procedures do not deprive litigants of their Seventh Amendment rights. *See, e.g., Fidelity & Deposit Co. v. United States,* 187 U.S. 315, 320 (1902). Stated succinctly, "[t]he constitutional guaranty does not stand in the way of the accomplishment of the result, much to be desired, that there shall be no trial by a jury when there is no disputable question of fact to be tried . . . ." Scott, *Trial By Jury and the Reform of Civil Procedure*, 31 Harv. L. Rev. 669, 690-91 (1918).

Petitioner thus resorts to arguing that "who really said what to whom and what did they mean" were issues in dispute that depended on witness credibility at trial and that it is "absolutely essential" for Petitioner to have yet a third opportunity—in addition to his deposition and his affidavit—to present his "testimony" (Pet. 23). But what TRW actually said to Petitioner has never been in dispute; "witness credibility" has never been an issue; and Peti-

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B, 11a). Second, Petitioner quotes his deposition testimony that it was a "stated assumption" and that TRW "promise[d]" that, regardless of the impact of his book on his employer, his employer could not terminate him (Pet. 20-21). Petitioner fails to inform the Court that, in addition to such self-serving and conclusory statements, he also testified about the precise words that TRW actually uttered to give him this impression. As the Court of Appeals expressly pointed out, and as noted above at p. 6, TRW said only that "[t]he topic sounds wonderful, and I have no problems with it" (Pet. App. A, 7a). This was, as a matter of state law, insufficient to support Petitioner's promissory estoppel claim (Pet. App. A, 7a).

tioner's opportunity to present his "testimony" and evidence has never been denied.[6]

After all, for purposes of summary judgment, TRW took as *true* Petitioner's own testimony about what TRW told him. The Court of Appeals did too, viewing Petitioner's evidence in the light most favorable to him. The only dispute in this case was thus a legal one—whether Petitioner's own testimony was sufficient to establish the elements of his state law claims. The Court of Appeals unanimously and properly concluded that it was not.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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[6] Petitioner never made a motion under Rule 56(f) seeking additional discovery. It is thus remarkable that, at this late stage, Petitioner still complains about an "incomplete record" (Pet. 5 n.1).